

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

FWB Toledo, LLC,

Case No. 3:20-cv-70

Plaintiff,

v.

MEMORANDUM OPINION  
AND ORDER

Auto-Owners Insurance Co.,

Defendant.

**I. INTRODUCTION AND BACKGROUND**

On December 28, 2017, there was a fire at a property owned by FWB Toledo, LLC (“FWB, LLC”) and insured by Auto-Owners. The parties disagreed over the appropriate scope of coverage and FWB, LLC filed suit in the Lucas County, Ohio Court of Common Pleas, alleging Defendant breached the parties’ contract, acted negligently, and acted in bad faith. Defendant timely removed the case here and now seeks to bifurcate trial and to stay discovery as to the bad faith claim. (Doc. No. 7). FWB, LLC filed a brief in opposition, (Doc. No. 10), and Defendant filed a brief in reply. (Doc. No. 11). For the reasons stated below, I grant Defendant’s motion in part and deny it in part.

**II. ANALYSIS**

Defendant first asserts it is entitled to an order bifurcating Plaintiff’s bad-faith claim pursuant to § 2315.21(B)(1) of the Ohio Revised Code. (Doc. No. 7). Defendant’s argument is not persuasive. A federal court exercising diversity jurisdiction follows federal procedural law and the substantive law of the state in which it sits. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). The manner and order in which discovery shall proceed and in which trial may be held is a matter of

procedural, not substantive, law. Therefore, I will consider Defendant's motion under the Federal Rules of Civil Procedure. See, e.g., *Hitzeman v. FWT, LLC*, Case No. 3:16-cv-736, 2017 WL 10901029, at \*1 (N.D. Ohio Aug. 9, 2017) (citing *Oster v. Huntington Bancshares Inc.*, Case. No. 3:16-cv-736, 2017 WL 3208620, at \*2–3 (S.D. Ohio 2017), for the proposition “that bifurcation is a procedural matter governed by Federal Civil Rule 42(b) rather than [O.]R.C. § 2315.21”).

Defendant next argues any trial of Plaintiff's bad-faith claim should be bifurcated from its breach of contract and negligence claims pursuant to Rule 42. See Fed. R. Civ. P. 42(b). Plaintiff does not oppose Defendant's motion to bifurcate the trial. I grant Defendant's motion to bifurcate the trial.

Plaintiff does oppose Defendant's request to bifurcate and stay discovery. (Doc. No. 10 at 2-4). Defendant's assertion of prejudice in support of its request for a stay of discovery focuses on the risks it allegedly would face if it had to defend against all of Plaintiff's claims in a single trial. (Doc. No. 11 at 4). This categorical assertion of prejudice falls short of fulfilling Defendant's burden. See, e.g., *Wolkosky v. 21st Century Centennial Ins. Co.*, Case. No. 2:10-CV-439, 2010 WL 2788676, at \*4 (S.D. Ohio July 14, 2010).

Moreover, I am not persuaded by Defendant's contention that staying discovery would be “the simplest and preferred method of proceeding.” (Doc. No. 7 at 7-8). Instead, a stay of discovery regarding Plaintiff's bad faith claim seems likely to invite disputes about whether discoverable information is related to breach or to bad-faith. See *Cook v. United Servs. Auto. Ass'n*, 169 F.R.D. 359, 362 (D. Nev. 1996). A stay also is likely to lead to some redundancy in a second round of discovery as well as two rounds of dispositive motions. See, e.g., *Hastings Mut. Ins. Co. v. Mengel Dairy Farms, LLC*, Case No. 5:19-cv-1728, 2020 WL 264267, at \*2 (N.D. Ohio Jan. 17, 2020).

I conclude the better course is to deny Defendant's motion for a stay of discovery without prejudice. The parties shall work together to resolve any discovery disputes pursuant to Local Rule

37.1. If appropriate, Defendant may seek a protective order or file a renewed motion for a stay of discovery.

### **III. CONCLUSION**

For the reasons stated above, I grant Defendant's motion to bifurcate the trial as to Plaintiff's bad-faith claims and deny the motion as to Defendant's request for a stay of discovery related to the bad-faith claims. (Doc. No. 7).

So Ordered.

s/ Jeffrey J. Helmick  
United States District Judge